

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



MICHAEL A. DELANEY  
DEPUTY ATTORNEY GENERAL

August 5, 2005

Section 5 Submission

Chief, Voting Section  
Civil Rights Division  
Room 7254 – NWB  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:8, a STATUTE related to the application to town or city clerk for inclusion on the town or city checklist, most recently amended by Laws of 1992 Chapter 287 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:8, a STATUTE related to the application to town or city clerk for inclusion on the town or city checklist, most recently amended by Laws of 1992 Chapter 287 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 287 (1992) amending RSA 654:8 is attached. (Exhibit 654:8 A)
  - 1. Chapter 79 (1991) amending RSA 654:8 is attached. (Exhibit 654:8 B)
- b) Chapter 436 (1979) recodifying RSA 55:09-a as RSA 654:8 is attached. (Exhibit 654:8 C)

c) The changes made by amendments to RSA 654:8 are as follows:

1. Chapter 287 (1992) amended the statute as follows:

- a. Insert the following first sentence in the introductory paragraph of this section: "*The provisions of this section shall apply in all cities and in all towns.*"
- b. Insert the phrase "...or to the supervisors of the checklist as provided in RSA 654:11..." in the second sentence of the introductory paragraph of this section following the words "...city clerk..."
- c. Replace the words "...have the power..." with "...be required..." in the last sentence of the introductory paragraph following the word "...shall..."

2. Chapter 79 (1991) removes paragraph I from this statute and reorders the remaining paragraphs accordingly

3. Chapter 436 (1979) recodified RSA 55:09-a as RSA 654:8

d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.

e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.

f) Not applicable.

g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).

h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 287 (Exhibit 654:8 A). The bill was signed into law (by the

Governor) on May 18, 1992, pursuant to New Hampshire Constitution Part Second, Article 44.

i) Adoption dates:

1. Chapter 287 (1992) adopted May 18, 1992
2. Chapter 79 (1991) adopted May 13, 1991
3. Chapter 436 (1979) adopted June 25, 1979

j) Effective dates:

1. Chapter 287 (1992) effective July 17, 1992
2. Chapter 79 (1991) effective July 12, 1991
3. Chapter 436 (1979) effective July 1, 1979

k) The changes have been enforced.

l) The changes affect the entire State of New Hampshire.

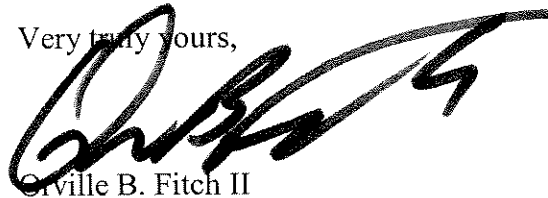
m) The purpose for the changes are as follows:

1. The purpose of the Chapter 287 (1992) change to make it mandatory for all towns and cities and to empower supervisors of the checklist and town/city clerks to act under this provision in adding names to the checklist. Originally only Supervisors of the Checklist could accept and act on applications to be added to the checklist. The law then allowed towns to vote to allow the Town Clerk to also accept applications and to assess proof of qualifications, then turning the application over to the Supervisors for a final determination. This change made it mandatory that both Supervisors of the Checklist and Clerks accept applications for registration as a voter and to evaluate proof of qualifications.
2. The purpose of the Chapter 79 (1991) change is to remove a reference to the authority of supervisors of the checklist to determine qualifications of voters from this statute because that authority had been changed in a different statute in the prior year.
3. The purpose of the Chapter 436 (1979) change is to recodify RSA 55:09-a as RSA 654:8

- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups ... to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
- o) None known.
- p) RSA 654:8 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:8 D. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:8 E is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II  
Senior Assistant Attorney General  
Civil Bureau  
(603) 271-1238  
[bud.fitch@doj.nh.gov](mailto:bud.fitch@doj.nh.gov)

87880.doc



2/4/92...4750s 3996L

7apr92....5492h 92-2330

16apr92.....5745h 10

5/6/92....6144s C of C

05/11/92..6238L-EBA

**Enrolled Bill Amendment**

**1992 SESSION**

SENATE BILL NO. 321 (CHAPTER 287, LAWS OF 1992)

INTRODUCED BY: Sen. Cohen of Dist. 24; Sen. Bass of Dist. 11; Sen. Disnard

of Dist. 8; Sen. McLane of Dist. 15; Sen. Roberge of Dist. 9; Rep. Durham of Hillsborough Dist. 18; Rep. P. White of Grafton Dist. 6; Rep. Shackett of Grafton Dist. 10; Rep. Hashem of Strafford Dist. 3; Rep. Baldizar of Hillsborough Dist. 22

REFERRED TO: Public Affairs

AN ACT relative to voter registration and changes in party affiliation with town clerks and relative to supervisors of the checklist.

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**AMENDED ANALYSIS**

This bill amends the election laws by:

(1) Repealing the provision in the election laws which permits a town to vote to have the supervisors of the checklist, rather than the town clerk, accept applications from persons to have their names added to the checklist.

(2) Requiring town and city clerks to accept applications from such persons according to certain conditions.

(3) Repealing the provision in the election laws which requires a city or town to vote to permit applications for changes in party affiliation to be made with the city or town clerk, and requiring that cities and towns shall permit such applications for changes in party affiliation.

(4) Allowing supervisors of the checklist and town and city clerks to request specific information from persons who are registering to vote in order to determine whether the applicant is qualified to vote.

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EXPLANATION: Matter added appears in ***bold italics***.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

3996L

92-2330

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**Enrolled Bill Amendment**

SB 321

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-two

AN ACT

relative to voter registration and changes in party affiliation with

town clerks and relative to supervisors of the checklist.

Be it Enacted by the Senate and House of Represen-

tatives in General Court convened:

1 Application Provisions to Apply in all Cities and Towns. Amend the introductory paragraph of RSA 654:8 to read as follows:

*The provisions of this section shall apply in all cities and in all towns. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk, or to the supervisors of the checklist as provided in RSA 654:11, for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall [have the power] be required to accept applications from such persons under the following conditions:*

2 Forwarding Forms; Provisions to Apply in all Cities and Towns.  
Amend RSA 654:9 to read as follows:

654:9 Forms to be Forwarded. *The provisions of this section shall apply in all cities and in all towns.* The town or city clerk shall present to the next meeting of the supervisors of the checklist the

triplicate registration forms of all persons making application to him since the previous meeting of said supervisors.

3 Repeal. RSA 654:10, relative to voter registration duties of town clerks, is repealed.

4 Repeal. RSA 654:34-b, relative to voting to permit applications for changes in party affiliations to be made with the city or the town clerk, is repealed.

5 Permitting Changes in Party Affiliation with Town or City Clerk. Amend RSA 654:34-a, I to read as follows:

I. A town or city [may] **shall** permit changes in party affiliation to be registered with a town or city clerk.

6 Repeal and Reenactment of RSA 654:12. RSA 654:12, relative to determining qualifications of applicants registering to vote, and repealed by 1990, 119:18, is hereby reenacted as it existed immediately prior to its repeal by 1990, 119:18.

7 Authority of Supervisors of the Checklist and Clerks to Determine Qualifications of Applicants Registering to Vote. RSA 654:12, I is repealed and reenacted to read as follows:

I. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, may require the applicant to present any one of the following from each qualification category:

(a) Citizenship. The applicant's birth certificate, passport,

naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which

indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:

Date: \_\_\_\_\_

CITIZENSHIP AFFIDAVIT

Name: \_\_\_\_\_

Name at birth if different: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Date of birth: \_\_\_\_\_

I hereby swear, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.

\_\_\_\_\_

(Signature of applicant)

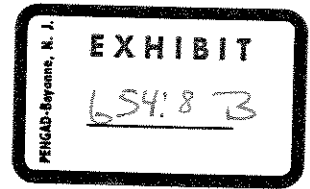
The penalty for perjury is a class B felony with a maximum sentence of imprisonment not to exceed 7 years and/or a fine not to exceed \$4,000.

(b) Age. Any reasonable documentation indicating the applicant is 18 years of age or older.

(c) Domicile. Any reasonable documentation which indicates that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote, or an affidavit declaring that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote.

8 Effective Date. This act shall take effect 60 days after its passage.





1179L

19march91.....1781h 91-0594

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HOUSE BILL - FINAL VERSION**1991 SESSION**HOUSE BILL NO. 398 (CHAPTER 79, LAWS OF 1991)

INTRODUCED BY: Rep. Flanagan of Rockingham Dist. 8; Rep. Dube of

Rockingham Dist. 9; Rep. N. Lawrence of Hillsborough

Dist. 20; Rep. Holden of Hillsborough Dist. 9; Rep.

P. White of Grafton Dist. 6

REFERRED TO: Constitutional and Statutory Revision

AN ACT relative to determining qualifications of applicants to vote.

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AMENDED ANALYSIS

This bill removes a reference to the authority of supervisors of the checklist to determine the qualifications of an applicant to vote. This authority was repealed during the 1990 legislative session.

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EXPLANATION: Matter added appears in **bold italics**.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

1179L

91-0594

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HOUSE BILL - FINAL VERSION

## HB 398

## STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-one

## AN ACT

relative to determining qualifications of applicants to vote.

Be it Enacted by the Senate and House of Represen-  
tatives in General Court convened:

1 Removing Reference to Determining Qualifications of Voter. Amend RSA 654:8 to read as follows:

~~654:8 Application to Town or City Clerk.~~ Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall have the power to accept applications from such persons under the following conditions:

[I. The supervisors of the checklist shall determine the qualifications of voters as provided in RSA 654:12.

II]I. The supervisors of the checklist may issue guidelines to the town clerk for the taking of evidence of qualifications presented by applicants.

[III]II. No application hereunder shall be accepted after the last meeting of the supervisors of the checklist before an election.

[IV]III. Such application shall be made during the regular office hours of the town or city clerk.

2 Effective Date. This act shall take effect 60 days after its passage.

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# EXHIBIT

654.8

## CHAPTER 436

[1979

Coast and Geodetic Survey, and Public Health Service, and all reserve components thereof, while in active service.

Members of the Merchant Marine of the United States in active duty or members of crews of vessels documented under the laws of the United States, or of vessels owned by the United States, and registered under charter to or control of the United States, and more than members of the armed forces) enrolled with the United States for emergency relief service, as officers or members of crews of any such vessels; but does not include persons so employed or enrolled for such employment or for training for such employment, or maintained for such emergency relief service, on the great lakes or the inland waterways.

(c) Civilian employees of the United States government, including the peace corps, serving outside the territorial limits of the several states of the United States and the District of Columbia, whether or not the employee is subject to civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(d) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces.

(e) The spouses or dependents of any person described in subparagraph (a), (b), (c), or (d) when residing with or accompanying them.

**654:5 Disqualification for Felony.** A person sentenced for a felony shall forfeit his rights as provided in RSA 607-A:2.

**654:6 Disqualification for Bribery or Intimidation.** Any person convicted of bribery or intimidation relating to elections under RSA 659:40 shall thereafter be forever disqualified from exercising the right to vote, except that the Supreme Court may, on notice to the attorney general, restore the privileges of a voter to any person who may have forfeited them by conviction of such offenses.

## General Voter Registration

**654:7 Voter Registration Form.** A standard registration application form shall be used throughout the state. The registration form shall be 4 inches by 6 inches and shall be made in triplicate. The secretary of state shall provide for the preparation of the voter registration form which shall be in substantially the following form:

### VOTER REGISTRATION CARD

(Please print or type)

1. Name \_\_\_\_\_  
Last First Middle Initial
2. Party Affiliation (if any) \_\_\_\_\_
3. Address \_\_\_\_\_  
Street
4. Birth Place \_\_\_\_\_  
City County ZIP  
State

1979]

## CHAPTER 436

669

5. If a naturalized citizen, give name of court where and date when naturalized \_\_\_\_\_

6. Date of Birth \_\_\_\_\_  
(Month/Date/Year)

7. Date of Registration \_\_\_\_\_

8. Place last registered to vote, if not a new registrant \_\_\_\_\_

I hereby swear, under penalty of perjury, that the answers to the questions above are true and correct to the best of my knowledge and belief.

(Signature of Applicant)

**654:8 Application to Town or City Clerk.** Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall have the power to accept applications from such persons under the following conditions:

I. The supervisors of the checklist shall determine the qualifications of voters as provided in RSA 654:12.

II. The supervisors of the checklist may issue guidelines to the town clerk for the taking of evidence of qualifications presented by applicants.

III. No application hereunder shall be accepted after the last meeting of the supervisors of the checklist before an election.

IV. Such application shall be made during the regular office hours of the town or city clerk.

**654:9 Forms to be Forwarded.** The town or city clerk shall present to the next meeting of the supervisors of the checklist the triplicate registration forms of all persons making application to him since the previous meeting of said supervisors.

**654:10 Exemption.** The provisions of RSA 654:8 and 654:9 shall apply in all cities and in all towns unless, upon a vote at a town meeting, a town chooses to exempt itself from such requirements. In a town which is exempt from the provisions of RSA 654:8 and 654:9, the town clerk shall have none of the powers and duties provided for therein, which powers shall be exercised by the supervisors of the checklist, unless and until at a subsequent annual town meeting the town votes to rescind said exemption.

**654:11 Application to Supervisors.** When the supervisors of the checklist receive a registration form from the town or city clerk or when an applicant submits the form to said supervisors in person at a session for the correction of the checklist, the supervisors of the checklist shall cause his name to be added to the checklist, unless they are of the opinion that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6. All decisions of the supervisors of the checklist shall be made by majority vote thereof.

### 654:12 Determining Qualifications of Applicant.

I. When determining the qualifications of an applicant, the supervisors of the checklist may require the applicant to present the following:

- (a) His birth certificate;
- (b) His naturalization papers if he is a naturalized citizen;



U.S. Department of Justice

Civil Rights Division

EXHIBIT

654:8 P

PENGAD 800-631-6989

JDR:RPL:SMC:jdh  
DJ 166-012-3  
2004-2563  
2004-2581  
2004-2582

Voting Section - NWB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.  
Assistant Attorney General  
Civil Bureau  
Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

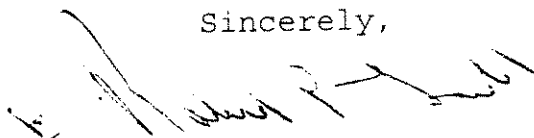
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

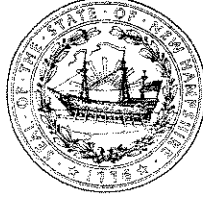
Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich  
Chief, Voting Section

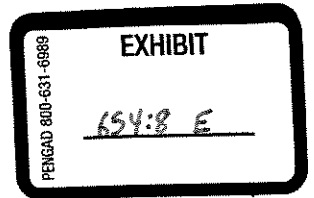
**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397



KELLY A. AYOTTE  
ATTORNEY GENERAL

MICHAEL A. DELANEY  
DEPUTY ATTORNEY GENERAL



**News Release**

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>  
New Hampshire Toll Free 1-866-8868-3703  
or 1-866-VOTER03  
[electionlaw@doj.nh.gov](mailto:electionlaw@doj.nh.gov)